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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Army Contract Award]

FILE: B-199852

DATE: January 30, 1981

MATTER OF: Saft America, Inc.

DIGEST:

1. Protest is denied where record indicates that contracting agency acted reasonably in setting procurement aside for small business as well as in designating certain major components as restricted source items.
2. GAO will not conduct audit of alleged restrictive procurement practices where protester fails to furnish sufficient information to justify such review.

Saft America, Inc. (Saft), [protests the award of a contract] to Quadratic Electronics, Inc., under invitation for bids (IFB) No. DAAH01-80-B-0583 issued by the United States Army Missile Command, Redstone Arsenal, Alabama.

The IFB was issued on July 9, 1980, as a total small business set-aside soliciting bids for 1,357 TOW missile battery assemblies. Saft, a large business for purposes of this procurement, argues that the set-aside is aimed at excluding it from the competition. In addition, Saft argues that there is no basis for the Army to have "restricted sources" for certain major components since it is capable of supplying these components.

We find no legal basis to question the award made to Quadratic Electronics, Inc.

In our decision in the matter of Saft America, Inc., B-193759, July 12, 1979, 79-2 CPD 28, we denied Saft's protest against the award of contracts on a restricted basis to Fourdee, Division of Emerson

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Electric Company (Fourdee), and George F. Fedon and Company (Fedon) for 1,727 TOW missile battery assemblies. We held that Saft did not provide convincing evidence that the Army acted unreasonably in negotiating these contracts exclusively with Fourdee and Fedon. We noted that the Army is authorized under 10 U.S.C. § 2304(a)(16) (1976) to negotiate such contracts as a means of providing a mobilization base in case of a national emergency. Nevertheless, we urged the Army to allow Saft to qualify its product for future procurements since this would broaden the Army's mobilization base and be consistent with the statutory mandate for competition in Government procurements whenever practicable.

The record indicates that the Army sent Saft a letter, dated May 8, 1979, explaining two possible methods to qualify its battery pack for use in the TOW battery assembly (submission of production hardware for Government testing or furnish a first article sample for Government testing if Saft was a successful offeror.) Although Saft acknowledged receipt of this information and indicated a continuing interest in having its product qualified during the next several months, it appears that Saft did not pursue the matter further.

Unlike the earlier procurement, the present solicitation was not negotiated solely with Fourdee and Fedon. Rather, the Army made the procurement an advertised, total small business set-aside, but designated certain major components "restricted source items." These restricted source items were the battery cell, which was restricted to the General Electric Company, and the battery packs, which were restricted to either Fourdee or Fedon. [Under the terms of the solicitation, the successful bidder had to use these restricted source items in the battery assemblies.]

As noted above, Saft believes that the purpose of the small business set-aside was to exclude it from the competition. [The Army, however, citing Otis Elevator Company, B-194147, May 10, 1979, 79-1 CPD 331, argues that our Office has held that the determination of whether a particular procurement

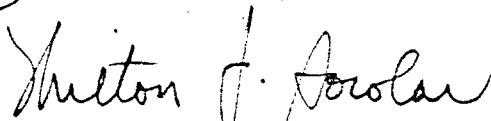
should be set aside for small business is a matter within the contracting officer's discretion which will not be disturbed absent a showing that the contracting officer has abused that discretion. In our opinion, the contracting officer's decision to set this procurement aside for small businesses, which was reviewed and concurred in by a Small Business Administration representative, was reasonable.

As to Saft's complaint about the use of restricted sources for certain components, the Army cites Sub-Sea Systems, Inc., B-195741, February 12, 1980, 80-1 CPD 123, for our rule that since Government procurement officials are generally in the best position to know the Government's actual needs and, as a result, are best able to draft appropriate specifications, we will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. In light of this rule, the Army argues that the use of restricted source items in this particular situation was proper. It points out that the battery cell supplied by the General Electric Company was designed specifically for use in the TOW battery assembly and is the only known cell capable of withstanding the required vibration testing. As to the battery packs supplied by Fourdee and Fedon, the Army states that it lacks adequate documentation to procure these items from any source other than Fourdee and Fedon, the current producers of the battery assemblies. In this connection, the Army notes that Saft failed to take steps to qualify its product even though given the opportunity. Therefore, we conclude that this portion of Saft's protest is also without merit under the rationale of the Sub-Sea Systems case.

Saft concedes that the agency report on the protest, which set forth the above Army positions, legally supports the denial of its protest. Nevertheless, Saft maintains that denying the protest, in light of the history of TOW battery assembly procurements, confirms the Army's restriction of competition by excluding Saft, a qualified supplier, which increases the Government's cost and fails to achieve multiple sourcing. Saft therefore requests that we conduct an audit of the last 5 years of the Army procurements for the TOW battery assembly.)

[Under our audit function, we review a broad spectrum of Federal activities with limited resources. Consequently, we are forced to make critical decisions regarding which reviews we will undertake in terms of obtaining the greatest benefit for the resources utilized. We do not believe that the information which Saft has furnished us indicates that the possible benefits to be obtained from a review of the Army's TOW battery assembly procurements will outweigh the benefits that might be obtained by utilizing our limited funds and personnel on other investigations.] In this regard, [the record clearly indicates that Saft contributed to its exclusion when it did not take advantage of the opportunity to qualify its product.] Moreover, the Army's use here of an advertised total small business set-aside is less restrictive than the method used in 1979, where contracts were negotiated only with Fourdee and Fedon, and several bids were received.

[Protest denied.]



For the Comptroller General
of the United States